

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 AYNA AMANDA MEPPELINK,

12 Plaintiff,

13 v.

14 WILMINGTON SAVINGS FUND
15 SOCIETY FSB, d/b/a CHRISTIANA
16 TRUST, a trustee for PRETIUM
17 MORTGAGE CREDIT MANAGEMENT;
18 SELENE FINANCE LP; and QUALITY
19 LOAN SERVICE CORP OF
20 WASHINGTON,

21 Defendants.

CASE NO. C19-5655RJB

ORDER ON PLAINTIFF'S
MOTION TO PROCEED IN
FORMA PAUPERIS, FOR FREE
ACCESS TO PACER, FOR
APPOINTMENT OF COUNSEL
AND FOR JURY DEMAND

22 THIS MATTER comes before the Court on the Plaintiff's Motion to Proceed *In Forma*
23 *Pauperis* ("IFP"), for Free Access to PACER [Public Access to Court Electronic Records], for
24 Appointment of Counsel, and for Jury Demand. Dkt. 38. The Court has considered the
pleadings filed regarding the motion and the remaining file.

Originally filed in Kitsap County, Washington, Superior Court, this case arises from a
dispute over a mortgage and deed of trust on property commonly known as 11700 Carriage Place

1 SE, Olalla, Washington. Dkt. 1-3. For the reasons provided, the Plaintiff's various motions
2 should be denied.

3 I. FACTS

4 This case was filed on May 15, 2017 and asserted only state law claims for quiet title and for
5 violations of Washington's Consumer Protection Act. RCW 19.86, *et. seq. Meppelink v.*
6 *Wilmington Savings Fund Society, SSB, et. al.*, Kitsap County, Washington Superior Court case
7 number 17-2-00839-9; filed in this case at Dkt. 13-1, at 1 and 6-17. No mention of a trial by jury
8 is made in the original complaint. *Id.*

9 In a May 17, 2019 Order granting the Plaintiff's Motion for Leave to Amend the Complaint,
10 the Plaintiff was ordered to "file the amended complaint with the court by June 15, 2019." Dkt.
11 14, at 24. On June 11, 2019, the Plaintiff filed an "Amended Complaint Re: Claims for Wrongful
12 Foreclosure Violation of Regulation X of [the Real Estate Settlement Procedures Act
13 ("RESPA")] (12 U.S.C. § 2601, *et. seq.*) Declaratory Relief and Damages" in the Kitsap County,
14 Washington Superior Court. Dkt. 13-3, at 91-204. The Plaintiff did not make a jury demand in
15 the Amended Complaint. *Id.*

16 The case was removed to this Court on July 17, 2019. Dkt. 1.

17 On August 8, 2019, Wilmington Saving Fund Society, FSB, d/b/a Christiana Trust, trustee
18 for Pretium Mortgage Acquisition Trust ("Wilmington") and Selene Finance LP ("Selene") filed
19 an answer and asserted counterclaims against the Plaintiff. Dkts. 8 and 9. On September 2,
20 2019, the Plaintiff filed an answer to Wilmington and Selene's counterclaim. Dkt. 16.

21 On October 31, 2019, the Joint Status Report was filed. Dkt. 36. In this pleading, the
22 Plaintiff "requests a jury trial, because she believes that the issues are based on matters of fact
23 and law." Dkt. 36, at 5. This is the first time the Plaintiff mentions a jury trial.

1 The Plaintiff now moves (1) to proceed IFP in order to gain free access to PACER and to
2 receive a waiver of jury fees, (2) for appointment of counsel, and (3) for a trial by jury. Dkt. 38.
3 Wilmington and Selene oppose the motion. Dkt. 40. The Plaintiff filed a reply (Dkt. 41) and the
4 motion is ripe for decision.

5 II. DISCUSSION

6 A. MOTION TO PROCEED IFP TO GAIN FREE ACCESS TO PACER

7 Section 1915(a) provides that: “[a]ny court of the United States may authorize the
8 commencement . . . of any suit . . . without prepayment of fees or security therefor, by a person
9 who submits an affidavit that includes a statement of all assets” showing that “the person is
10 unable to pay such fees or give security therefor.” The district court may permit indigent
11 litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. *See*
12 28 U.S.C. § 1915 (a). However, the court has broad discretion in denying an application to
13 proceed *in forma pauperis*. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963), *cert. denied* 375
14 U.S. 845 (1963).

15 On September 30, 2019, the Plaintiff filed a Declaration and Application to Proceed IFP
16 and Written Consent for Payment of Costs. Dkt. 31. This case was removed and the filing fee
17 was paid by the removing Defendants. Dkt. 1. The Plaintiff’s application was denied as moot
18 because the Plaintiff did not need to pay a filing fee. Dkt. 33.

19 The Plaintiff now moves for IFP status to gain free access to PACER, the Public Access
20 to Court Electronic Records system, and for a waiver of jury fees. Dkt. 38. (The IFP application
21 as it relates to the waiver of jury fees will be discussed below in section C.) The Plaintiff states
22 that, based on notices sent by the Court relating to the Court’s upgrade to its electronic filing
23 system, CM/ECF, she believes that after January 2020, she will no longer be given initial free
24

1 copies of the documents filed in her case. *Id.* The Plaintiff discusses other changes to PACER.

2 *Id.* The Plaintiff also states that:

3 In order to do effective research – find rules and supporting case law that apply to
4 her case the lack of which the Court has remarked upon – the Plaintiff needs
5 access to PACER. The regular search engines, such as Google, often render
irrelevant responses, including articles containing inaccurate advice, no matter
how specific the search terms are worded.

6 *Id.*

7 The Plaintiff’s motion to proceed IFP in order to gain free access to PACER (Dkt. 38)
8 should be denied. Free access to the PACER system is not a listed item under §1915. The
9 Plaintiff will continue to receive initial free copies of all pleadings filed in the case after the new
10 system is in place. If she has question about the new system, the Plaintiff may wish to consult
11 the Court’s website or the CM/ECF help desk at 206-370-8440. Further, the Court’s website
12 also contains the Federal Rules of Civil Procedure, the Local Rules of the Western District of
13 Washington, and several other helpful links. The Plaintiff made the decision to file the lawsuit,
14 her lack of knowledge of the law and less than perfect resources notwithstanding.

15 **B. MOTION FOR APPOINTMENT OF COUNSEL**

16 Under 28 U.S.C. § 1915(e)(1), the court may request an attorney to represent any person
17 unable to afford counsel. Pursuant to § 1915, the court may appoint counsel in exceptional
18 circumstances. *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984). To find exceptional
19 circumstances, the court must evaluate the likelihood of success on the merits and the ability of
20 the petitioner to articulate the claims pro se in light of the complexity of the legal issues
21 involved. *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983).

22 The Plaintiff’s motion for appointment of counsel (Dkt. 38) should be denied. She has
23 not shown a likelihood of success on the merits. Further, the Plaintiff appears to be able to
24

1 articulate her claims adequately in light of the legal issues involved. The circumstances of this
2 case do not make appointment of counsel necessary or just, nor does the case present exceptional
3 circumstances. The application for appointment of counsel (Dkt. 38) should be denied.

4 **C. JURY DEMAND/WAIVER OF JURY FEES**

5 Pursuant to Fed. R. Civ. P. 38(b), “[o]n any issue triable of right by a jury, a party may
6 demand a jury trial by . . . serving the other parties with a written demand . . . no later than 14
7 days after the last pleading directed to the issue is served.” “A party waives a jury trial unless its
8 demand is properly served and filed.” Rule 38(d).

9 Here, the “last pleading directed to the issue” was the Plaintiff’s September 2, 2019
10 answer to Wilmington and Selene’s counterclaim (Dkt. 16). *Zivkovic v. S. California Edison*
11 *Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002)(noting “last pleading directed to the issue” was the
12 answer); *Pac. Fisheries Corp. v. HHH Cas. & Gen. Ins., Ltd.*, 239 F.3d 1000, 1002 (9th Cir.
13 2001)(noting “last pleading directed to the issue” was the answer). Accordingly, the Plaintiff’s
14 jury demand was due 14 days later, on September 16, 2019. Plaintiff first mentioned trial by jury
15 on October 31, 2019 in the Joint Status Report. The Plaintiff’s jury demand was untimely. She
16 has waived her right to a jury trial.

17 In her reply, the Plaintiff urges the Court to exercise discretion under Fed. R. Civ. P. 39
18 and find that a trial by jury should occur because of the Plaintiff’s “need for help and in the
19 interest of justice.” Dkt. 41, at 7.

20 Under Rule 39(b), “the court may, on motion, order a jury trial on any issue for which a
21 jury might have been demanded.” The court’s discretion to order a jury trial on motion by a
22 party who has not timely demanded one is narrow. *Pac. Fisheries*, at 1002 (*citation omitted*). It
23
24

1 “does not permit a court to grant relief when the failure to make a timely demand results from an
2 oversight or inadvertence.” *Id.*

3 The Plaintiff’s motion for a trial by jury (Dkt. 38) should be denied. The grounds offered by
4 the Plaintiff are insufficient. The ground offered – the Plaintiff’s need for help and “the interest
5 of justice” - support nothing more than “oversight or inadvertence.” “An untimely request for a
6 jury trial must be denied unless some cause beyond mere [oversight or] inadvertence is shown.”
7 *Pac. Fisheries*, at 1002. Further, her *pro se* status is not adequate and only establishes
8 “inadvertence.” *Zivkovic*, at 1087 (holding that *pro se* Plaintiff’s good faith mistake regarding
9 the deadline to demand a jury was no more than inadvertence and not a sufficient basis to grant
10 relief from an untimely jury demand under Rule 39(b)).

11 The Plaintiff’s motion to proceed IFP for purposes of waiver of the jury fee (Dkt. 38)
12 should be denied as moot. The case will not be tried by a jury.

13 III. ORDER

14 It is **ORDERED** that:

- 15 • The Plaintiff’s Motion to Proceed *In Forma Pauperis*, for Free Access to PACER, for
16 Appointment of Counsel, and for Jury Demand (Dkt. 38) **IS DENIED**.

17 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to
18 any party appearing pro se at said party’s last known address.

19 Dated this 30th day of December, 2019.

20 

21 ROBERT J. BRYAN
22 United States District Judge
23
24